DIVISION II

ARKANSAS COURT OF APPEALS
NO T DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

CA06-548

FEBRUARY 14, 2007

JEFFERY LAISURE

APPELLANT

v.

MICHELLE LAISURE ZIMMERMAN

APPELLEE

APPEAL FROM THE SALINE COUNTY CIRCUIT COURT
[E98-986-1]

HONORABLE ROBERT WILSON GARRETT, JUDGE

AFFIRMED

Appellant Jeffrey Laisure challenges the trial court's entry of judgment against him and asserts two points of error on appeal: (1) The trial court erred in finding that appellee Michelle Laisure Zimmerman was not estopped from asserting that child support should be collected at the rate of $650 per month rather than $400 per month; (2) The trial court erred when it refused to permit a witness to testify. We find no error and affirm.

Appellant and appellee were divorced by decree filed for record on January 29, 1999. On August 31, 1999, the trial court held a hearing on appellee's motion for contempt and modification. As a result of this hearing, the trial court entered an order filed of record on November 1, 1999. This order increased appellant's child-support obligation to $650 per month with the increase effective and due on September 30, 1999, and on the last day of each month thereafter. On September 28, 2004, appellee filed her motion for contempt and order to show cause alleging that appellant had willfully failed to pay support in the amount of $650

per month pursuant to the court order. This motion also acknowledged that appellant had been paying $400 per month support directly to appellee rather than through the clerk's office. Appellee amended the motion in December to include the allegation that appellant had recently paid child support with an insufficientfunds check and that appellee had incurred charges for writing checks that were insufficiently funded in reliance on appellant's check. Appellant answered asserting affirmative defenses including estoppel and counterclaimed for a reduction in support.

The evidence and record indicate that the parties generally agreed that appellant only paid child-support of $650 a month for a short period of time and had paid $400 directly to appellee for almost five years prior to appellee filing for contempt. At trial, appellant testified that appellee had agreed to a reduction in child support because he had filed bankruptcy and was unemployment. Appellee denied that any such agreement was made explaining that she accepted the money tendered by appellant because she needed it. On appeal, appellant claims that the witness who was excluded from testifying, appellant's girlfriend, would state that she heard this agreement.

Appellant states that he is not asking this court to simply find that, because appellee did not pursue collection for the extended period of time, her rights are waived. However, he argues, this court should consider that the record is silent as to any request for an additional amount by appellee.

We find no merit to appellant's argument. Even if appellant had proved that the parties had agreed to modify the court-ordered child support, our courts do not recognize private

agreements modifying the amount of child support due to the mandates of Ark. Code Ann. §§ 9-12-314(b) (Repl. 2002) and 9-14-234(b) (Repl. 2002). *Shroyer v. Kauffman*, 75 Ark. App. 26, 758 S.W.3d 861 (2001); *see also Sullivan v. Edens*, 304 Ark. 133, 801 S.W.2d 32 (1990)(finding that trial court erred in recognizing parties' private agreement for payments that fell due after the 1987 amendments to §§ 9-12-314 and 9-14-234). Arkansas Code Annotated section 9-12-314(c) (Repl. 2002) states in part that a trial court may not set aside, alter, or modify any decree or judgment, or order which has accrued unpaid support prior to the filing of a motion to do so. Our supreme court has stated that both the letter and spirit of the statute are aimed at removing unilateral alteration of child support by a noncustodial parent by directing that the amount fixed by the court shall prevail until one parent moves to change it. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993) (holding that custodial parent's acceptance of reduced child-support payments without complaint for several months did not justify the application of estoppel).

The record before us indicates that the action appellant took in this case was an attempt to alter unilaterally the amount fixed by the trial court in its order setting child support at $650 per month. Appellant did not petition for a modification until his answer to appellee's motion for contempt. He testified at trial that he and appellee had a conversation that neither of them could afford to go through another court process at that time. He further testified that he paid her these support amounts almost exclusively in cash, but that she had accurately acknowledged receipt of the $400 increments. He also confirmed appellee's earlier testimony regarding appellee's refusal to sign a particular receipt. In that instance, appellant's girlfriend

attempted to obtain appellee's signature on a receipt that stated that the child support was paid in full with the $400 payment. Appellee refused to sign the receipt stating that the amount owed was $650. All of these facts support the inference that appellant was attempting to alter unilaterally the trial court's order.

Furthermore, appellant's estoppel argument is unsupported. He argues that the trial court erred in failing to find that appellee was estopped from asserting her right to $650 a month, and cites a case stating that a party claiming estoppel must prove he has relied in good faith on wrongful conduct and has changed his position to his detriment. *See Christmas v. Raley*, 260 Ark. 150, 539 S.W.2d 405 (1976). Despite these assertions, he fails to identify how appellee engaged in wrongful conduct or how he changed his position to his detriment. Equitable promissory estoppel requires the innocent party to rely to his detriment on an oral agreement. *Shroyer*, *supra*. Even if appellant had proved that there was an agreement to reduce his support obligation, there is no evidence that he did so to his detriment. The consequence of his reliance was all to his benefit, without any corresponding detriment. *See Shroyer*, *supra*. Accordingly, we find no merit to his argument that the trial court erred in refusing to find appellee estopped from asserting a legal right to the full amount of the child support previously ordered in the case.

Neither do we find merit to appellant's claim that the trial court's exclusion of a witness, appellant's girlfriend, from testifying was prejudicial error. Appellee's attorney invoked Rule 615 of the Arkansas Rules of Evidence that provides for the exclusion of witnesses from the court room during testimony. The trial court found that the witness violated

the rule when she was seen by his case coordinator either opening the door to the courtroom or attempting to listen to testimony. The witness excused her viewing of the courtroom as a brief purview of the area intended to help others not associated with the case determine who was in the courtroom. Appellant urges us to find the witness's action as a slight violation and to hold that the trial court should have permitted the witness to testify.

Rule 615 of the Arkansas Rules of Evidence requires a court to exclude witnesses upon the request of a party so that they cannot hear the testimony of other witnesses, unless the witnesses are a party in the case, or in some other way closely affiliated with a party. Distinctly not a matter of discretion, the trial judge must grant the rule if a party requests the rule and no exceptions apply. Blaylock v. Strecker, 291 Ark. 340, 724 S.W.2d 470 (1987). However, the rule does not mention the consequences of noncompliance when a witness was ordered sequestered but does not comply. *Id.* The *Blaylock* court summarized from existing case law three possible consequences: (1) citing the witness for contempt; (2) permitting comment on the witness's noncompliance in order to reflect on his or her credibility; and (3) refusing to let the witness testify. *Id.* Arkansas courts favor the second option. *Id.* In fact, the standard for the exclusion of a witness's testimony remains one of narrow discretion. *Id.* However, narrow discretion arises only when the noncompliance occurred with the consent, connivance, or procurement of a party or his attorney. *Id.* On appeal, we also determine whether the error of the trial judge concerning a Rule 615 challenge was harmless or prejudicial. *Id.*

Whether or not the trial court erred, appellant neither argued or demonstrated prejudice resulting from the exclusion of the witness's testimony. The witness began her testimony by acknowledging that she had been appellant's girlfriend for a little over five years. Her testimony was interrupted when the trial court stopped the witness upon the report that the witness had been listening to the testimony while in the hallway. The court took testimony regarding the allegation of the violation of the exclusionary rule. After the court determined that the witness would not be permitted to testify, her testimony was proffered. In that proffered testimony, she repeated appellant's assertion that appellee had agreed to a reduction of child support, but she also confirmed appellant's and appellee's accounts of appellee's refusal to sign a receipt that stated that a $400 payment was for child support paid in full. Appellant does not present an argument as to how the failure to admit this testimony was prejudicial, and we find no prejudice.

Accordingly, we find no error and affirm.

Affirmed.

GLADWIN and BIRD, JJ., agree.